



was described as occurring when a tip of a metal basket hit appellant near her eye which caused dizziness and inability to stand up. The authorizing official was Diane Galeazzo, RN.

On May 19, 2004 Jerry Horn, a physician's assistant, diagnosed head trauma injury and a right eye condition.<sup>1</sup> He noted that appellant was hit in the right eye on May 17, 2004. Appellant was released to light duty as of May 19, 2004.<sup>2</sup>

In office visit notes dated May 20, 2004, Nancy W. O'Rourke, N.P., Ph.D, reported that appellant was struck in the right eye on May 17, 2004. She related that appellant had dizziness and bleeding. Ms. O'Rourke indicated that her two head scans had been performed which were negative and that "[appellant] has since developed headache." A physical examination revealed right-sided headache and "resolving ecchymosis to the right upper eyelid."

In a May 24, 2004 treatment note, Ms. O'Rourke, diagnosed head injury with right eye contusion and postconcussive headache.

On December 17, 2004 the Office received May 17, 2004 computed tomography (CT) scans of the head and orbits, which were both negative. The reports both reported trauma and head pain.

On November 17, 2005 the Office received Rochester General emergency room reports, progress notes and CT scans dated May 17, 2004.<sup>3</sup> Someone in the emergency room, with an illegible signature, noted that appellant was struck in the right eye at work and that she got dizzy when she stood up. A physical examination revealed a contusion to the right lateral brow area and recommended CT scans of the orbits and head.

In a letter dated March 27, 2006, the Office requested additional information from appellant regarding the claimed May 17, 2004 injury. It explained that a physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

On April 12, 2004 appellant submitted Rochester General emergency room reports, progress notes and CT scans dated May 17, 2004.

By decision dated May 3, 2006, the Office denied appellant's claim on the grounds that she failed to establish fact of injury. The Office found that the employment incident occurred as alleged, but the medical evidence "did not provide a firm diagnosis resulting from" the May 17, 2004 incident.

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<sup>1</sup> The word after eye is illegible.

<sup>2</sup> An amended copy changed the return to work date to May 20, 2004.

<sup>3</sup> The emergency doctor's signature is illegible.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

## ANALYSIS

The Office accepted that appellant was struck by a wire cage in the right eye on May 17, 2004. However, the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that being struck by a wire cage in the right eye at work caused a personal injury on May 17, 2004. The medical evidence contains no firm diagnosis, no rationale and no explanation of the mechanism of injury regarding the incident on May 17, 2004.

The record contains a May 17, 2004 report from someone in the Rochester General emergency room, whose signature is illegible, who noted that appellant was struck in the right eye at work and that she got dizzy when she stood up. A physical examination revealed a contusion to the right lateral brow area and CT scans of the orbits and head were requested. However, the Board has held that medical reports lacking proper identification cannot be considered as probative evidence in support of a claim.<sup>8</sup> As it is unclear who signed the May 17, 2004 report, this medical report is insufficient to support appellant's claim.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>6</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006); *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>7</sup> *Sedi L. Graham*, 57 ECAB \_\_\_\_ (Docket No. 06-135, issued March 15, 2006); *M.W.*, 57 ECAB \_\_\_\_ (Docket No. 06-749, issued August 15, 2006).

<sup>8</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006).

Appellant submitted reports by Mr. Horn, a physician's assistant, and Ms. O'Rourke, a nurse practitioner. The Board notes that this evidence is not probative medical evidence as the persons completing the reports are not physicians as defined in 5 U.S.C. § 8101(2).<sup>9</sup>

Thus, the Board finds that the medical evidence presented is insufficient to establish that appellant sustained an injury when she was struck by a wire cage on May 17, 2004.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a compensable injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 3, 2006 is affirmed.

Issued: May 3, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *Thomas O. Bouis*, 57 ECAB \_\_\_\_ (Docket No. 06-692, issued June 7, 2006).